

SENATE BILL 222
By Miller

AN ACT to enact the "Drug Dealer Liability Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Drug Dealer Liability Act".

SECTION 2. The purpose of this act is to provide a civil remedy for damages to persons in a community injured as a result of illegal drug use. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to drugs in utero ("drug babies"). The act will enable them to recover damages from those persons in the community who have joined the illegal drug market. A further purpose of the act is to shift, to the extent possible, the cost of the damage caused by the existence of the illegal drug market in a community to those who illegally profit from that market. The further purpose of the act is to establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the illegal drug distribution market. The further purpose is to establish an incentive for drug users to identify and seek payment for their own drug treatment from those dealers who have sold drugs to the user in the past.

SECTION 3. The legislature finds and declares all of the following:

(1) Every community in the country is affected by the marketing and distribution of illegal drugs. A vast amount of state and local resources are expended in coping with the financial, physical, and emotional toll that results from the existence of the illegal drug market. Families, employers, insurers, and society in general bear the substantial

costs of coping with the marketing of illegal drugs. Drug babies and parents, particularly those of adolescent illegal drug users, suffer significant noneconomic injury as well.

(2) Although the criminal justice system is an important weapon against the illegal drug market, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal drugs. The persons who have joined the illegal drug market should bear the cost of the harm caused by that market in the community.

(3) The threat of liability under this act serves as an additional deterrent to a recognizable segment of the illegal drug network. A person who has nondrug related assets, who markets illegal drugs at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time casual dealer who has not yet made substantial profits. This act provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

(4) This act imposes liability against all participants in the illegal drug market, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are those people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

(5) A parent of an adolescent illegal drug user often expends considerable financial resources, typically in the tens of thousands of dollars, for the child's drug treatment. Local and state governments provide drug treatment and related medical services made necessary by the distribution of illegal drugs. The treatment of drug babies is a considerable cost to local and state governments. Insurers pay large sums

for medical treatment relating to drug addiction and use. Employers suffer losses as a result of illegal drug use by employees due to lost productivity, employee drug-related workplace accidents, and employer contributions to insurers, and local and state governments have existing legal staffs that can bring civil suits against those involved in the illegal drug market, in appropriate cases, if a clear legal mechanism for liability and recovery is established.

(6) Drug babies, who are clearly the most innocent and vulnerable of those affected by illegal drug use, are often the most physically and mentally damaged due to the existence of an illegal drug market in a community. For many of these babies, the only hope is extensive medical and psychological treatment, physical therapy, and special education. All of these potential remedies are expensive. These babies, through their legal guardians and through court appointed guardians ad litem, should be able to recover damages from those in the community who have entered and participated in the marketing of the types of illegal drugs that have caused their injuries.

(7) In theory, civil actions for damages for distribution of illegal drugs can be brought under existing law. They are not. Several barriers account for this. Under existing tort law, only those dealers in the actual chain of distribution to a particular user could be sued. Drug babies, parents of adolescent illegal drug users, and insurers are not likely to be able to identify the chain of distribution to a particular user. Furthermore, drug treatment experts largely agree that users are unlikely to identify and bring suit against their own dealers, even after they have recovered, given the present requirements for a civil action.

(8) Those involved in the illegal drug market in a community are necessarily interrelated and interdependent, even if their identity is unknown to one another. Each new dealer obtains the benefit of the existing illegal drug distribution system to make

illegal drugs available to him or her. In addition, the existing market aids a new entrant by the prior development of people as users. Many experts on the illegal drug market agree that all participants are ultimately likely to be indirectly related. That is, beginning with any one dealer, given the theoretical ability to identify every person known by that dealer to be involved in illegal drug trafficking, and in turn each of such others known to them, and so on, the illegal drug market in a community would ultimately be fully revealed.

(9) Market liability has been created with respect to legitimate products by judicial decision in some states. It provides for civil recovery by plaintiffs who are unable to identify the particular manufacturer of the product that is claimed to have caused them harm, allowing recovery from all manufacturers of the product who participated in that particular market. The market liability theory has been shown to be destructive of market initiative and product development when applied to legitimate markets. Because of its potential for undermining markets, this act expressly adopts a legislatively crafted form of liability for those who intentionally join the illegal drug market. The liability established by this act grows out of but is distinct from existing judicially crafted market liability.

(10) The prospect of a future suit for the costs of drug treatment may drive a wedge between prospective dealers and their customers by encouraging users to turn on their dealers. Therefore, liability for those costs, even to the user, is imposed under this act as long as the user identifies and brings suit against the user's own dealers.

(11) Allowing dealers who face a civil judgment for their illegal drug marketing to bring suit against their own sources for contribution may also drive a wedge into the relationships among some participants in the illegal drug distribution network.

(12) While not all persons who have suffered losses as a result of the marketing of illegal drugs will pursue an action for damages, at least some individuals, guardians of drug babies, government agencies that provide treatment, insurance companies, and employers will find such an action worthwhile. These persons deserve the opportunity to recover their losses. Some new entrants to retail drug dealing are likely to be deterred even if only a few of these suits are actually brought.

SECTION 4. As used in this act:

(1) "Illegal drug" means a drug whose distribution is a violation of state law.

(2) "Illegal drug market" means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches the user.

(3) "Illegal drug market target community" is the area described under Section 9.

(4) "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this act.

(5) "Level 1 offense" means possession of one-fourth (1/4) ounce or more, but less than four (4) ounces, or distribution of less than one (1) ounce of a specified illegal drug or possession of one (1) pound or twenty-five (25) plants or more, but less than four (4) pounds or fifty (50) plants, or distribution of less than one (1) pound of marijuana.

(6) "Level 2 offense" means possession of four (4) ounces or more, but less than eight (8) ounces, or distribution of one (1) ounce or more, but less than two (2) ounces, of a specified illegal drug or possession of four (4) pounds or more or fifty (50) plants or more, but less than eight (8) pounds or seventy-five (75) plants, or distribution of more than one (1) pound, but less than five (5) pounds, of marijuana.

(7) "Level 3 offense" means possession of eight (8) ounces or more, but less than sixteen (16) ounces, or distribution of two (2) ounces or more, but less than four (4)

ounces, of a specified illegal drug or possession of eight (8) pounds or more or seventy-five (75) plants or more, but less than sixteen (16) pounds or one hundred (100) plants or more, or distribution of more than five (5) pounds, but less than ten (10) pounds, of marijuana.

(8) "Level 4 offense" means possession of sixteen (16) ounces or more or distribution of four (4) ounces or more of a specified illegal drug or possession of sixteen (16) pounds or more or one hundred (100) plants or more, or distribution of ten (10) pounds or more of marijuana.

(9) "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing or distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only.

(10) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country.

(11) "Period of illegal drug use" means, in relation to the individual user, the time of the individual's first use of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence two (2) years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.

(12) "Place of illegal drug activity" means, in relation to the individual drug user, each state house legislative district in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence.

(13) "Place of participation" means, in relation to a defendant in an action brought under this act, each state house legislative district in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal market.

(14) "Specified illegal drug" means cocaine, heroin, or methamphetamine or any other drug the distribution of which is a violation of state law.

SECTION 5.

(a) A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this act. A person may recover damages under this act for injury resulting from an individual's use of an illegal drug.

(b) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

SECTION 6.

(a) One (1) or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug:

(1) A parent, legal guardian, child, spouse, or sibling of the individual drug user;

(2) An individual who was exposed to an illegal drug in utero;

(3) An employer of the individual drug user;

(4) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or

(5) A person injured as a result of the willful, reckless, or negligent actions of an individual drug user.

(b) A person entitled to bring an action under this section may seek damages from one (1) or more of the following:

(1) A person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the individual drug user;

(2) A person who knowingly participated in the illegal drug market if:

(A) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;

(B) The defendant's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and

(C) The defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

(c) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use;

(2) Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and

consortium, and other non-pecuniary losses proximately caused by an individual's use of an illegal drug;

(3) Exemplary damages;

(4) Reasonable attorney fees; and

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

SECTION 7.

(a) An individual drug user shall not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this subsection. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:

(1) The individual personally discloses to narcotics enforcement authorities, more than six (6) months before filing the action, all of the information known to the individual regarding all that individual's sources of illegal drugs;

(2) The individual has not used an illegal drug within the six (6) months before filing the action; and

(3) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.

(b) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.

(c) A person entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational

potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's illegal drug use;

(2) Reasonable attorney fees; and

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

SECTION 8.

A third party shall not pay damages awarded under this act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

SECTION 9.

A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community:

(1) For a level 1 offense, the state house legislative district in which the defendant's place of participation is situated;

(2) For a level 2 offense, the target community described in subdivision (1) plus all state house legislative districts with a border contiguous to that target community;

(3) For a level 3 offense, the target community described in subdivision (2) plus all state house legislative districts with a border contiguous to that target community; and

(4) For a level 4 offense, the state.

SECTION 10.

(a) Two (2) or more persons may join in one (1) action under this act as plaintiffs if their respective actions have at least one (1) place of illegal drug activity in common

and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.

(b) Two (2) or more persons may be joined in one (1) action under this act as defendants if those persons are liable to at least one (1) plaintiff.

(c) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one (1) or more plaintiffs according to their respective rights to relief and against one (1) or more defendants according to their respective liabilities.

SECTION 11.

(a) An action by an individual drug user is governed by the principles of comparative fault. Comparative fault attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of fault attributed to the plaintiff.

(b) The burden of providing the comparative fault of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

(c) Comparative fault shall not be attributed to a plaintiff who is not an individual drug user.

SECTION 12.

A person subject to liability under this act has a right of action for contribution against another person subject to liability under this act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this act and existing law against a person whom a defendant has asserted a right of contribution.

SECTION 13.

(a) Proof of participation in the illegal drug market in an action brought under this act shall be shown by clear and convincing evidence. Except as otherwise provided in this act, other elements of the cause of action shall be shown by a preponderance of the evidence.

(b) A person against whom recovery is sought who has a criminal conviction pursuant to state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236, codified at 21 U.S.C. 801 et seq., is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the two (2) years preceding the date of an act giving rise to a conviction.

(c) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

SECTION 14.

(a) A plaintiff under this act, subject to section 14(c), may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

(b) A person against whom a judgment has been rendered under this act is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment.

(c) Any assets sought to satisfy a judgment under this act that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released

following the conclusion of the forfeiture action or released by the agency that seized the assets.

SECTION 15.

(a) Except as otherwise provided in this section, a claim under this act shall not be brought more than two (2) years after the cause of action accrues. A cause of action accrues under this act when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

(b) For a plaintiff, the statute of limitations under this act is tolled while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this act or as otherwise provided by law. For a defendant, the statute of limitations under this act is tolled until six (6) months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.

(c) The statute of limitations under this act for a claim based on participation in the illegal drug market that occurred prior to the effective date of this act does not begin to run until the effective date of this act.

SECTION 16.

(a) A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this act.

(b) On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this act shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall take effect July 1, 2005, the public welfare requiring it.